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DATE: May 20, 2009

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TO: United States Patent and Trademark Office  
COMPANY: Examiner David C. Comstock, Art Unit 3733FAX NUMBER: 571-273-8300  
PHONE NUMBER:

FROM: Brad A. Schepers

DIRECT DIAL: (317) 238-6334  
FAX NUMBER: (317) 636-1507RE: Interview Summary and Comments on Statement of Reasons for Allowance for U.S. Patent Application  
No. 10/734,041 to Eisermann et al.COMMENTS: I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and  
Trademark Office at 571-273-8300 on:May 20, 2009  
(Date of Transmission)Brad A. Schepers  
Name of Registered Representative  
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Client Matter No.: 334 MSDI-222

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KRIEG DEVAULT LLP  
ONE INDIANA SQUARE  
SUITE 2800  
INDIANAPOLIS, IN 46204  
TELEPHONE-(317) 636-  
4341  
FAX-(317) 636-1507KRIEG DEVAULT LLP  
12800 N MERIDIAN STREET  
SUITE 300  
CARMEL, IN 46032  
TELEPHONE-(317) 566-  
1110  
FAX-(317) 636-1507KRIEG DEVAULT GALVIN  
LLP  
5231 HOHMAN STREET  
HAMMOND, IN 46320  
TELEPHONE-(219) 933-  
0380 FAX-(219) 933-0471KRIEG DEVAULT LUNDY  
LLP  
825 ANTHONY WAYNE  
BUILDING  
203 EAST BERRY STREET  
FT. WAYNE, IN 46802  
TELEPHONE-(260) 422-  
1534  
FAX-(260) 423-1590

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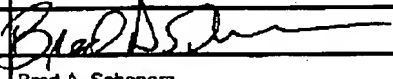
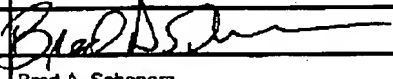
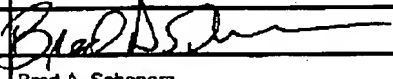
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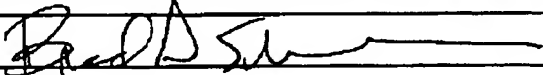
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|  |   |                        |                        |
|--|---|------------------------|------------------------|
| <b>TRANSMITTAL<br/>FORM</b>                              |   | Application Number     | 10/734,041             |
|  |   | Filing Date            | December 11, 2003      |
|  |   | First Named Inventor   | Lukas Elsermann et al. |
|  |   | Art Unit               | 3733                   |
|  |   | Examiner Name          | David C. Comstock      |
|  |   | Attorney Docket Number | MSDI-222/PC765.00      |
| (to be used for all correspondence after initial filing) |   |                        |                        |
| Total Number of Pages in This Submission                 | 5 |                        |                        |

| ENCLOSURES (Check all that apply)   |  |  |           |                    |           |   |              |                  |      |              |          |        |
|---|--|--|-----------|--------------------|-----------|---|--------------|------------------|------|--------------|----------|--------|
| <input type="checkbox"/> Fee Transmittal Form<br><input type="checkbox"/> Fee Attached<br><input type="checkbox"/> Amendment/Reply<br><input type="checkbox"/> After Final<br><input type="checkbox"/> Affidavits/declaration(s)<br><input type="checkbox"/> Extension of Time Request<br><input type="checkbox"/> Express Abandonment Request<br><input type="checkbox"/> Information Disclosure Statement<br><br><input type="checkbox"/> Certified Copy of Priority Document(s)<br><input type="checkbox"/> Reply to Missing Parts/Incomplete Application<br><input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53 | <input type="checkbox"/> Drawing(s)<br><input type="checkbox"/> Licensing-related Papers<br><input type="checkbox"/> Petition<br><input type="checkbox"/> Petition to Convert to a Provisional Application<br><input type="checkbox"/> Power of Attorney, Revocation<br><input type="checkbox"/> Change of Correspondence Address<br><input type="checkbox"/> Terminal Disclaimer<br><input type="checkbox"/> Request for Refund<br><input type="checkbox"/> CD, Number of CD(s) _____<br><input type="checkbox"/> Landscape Table on CD | <input type="checkbox"/> After Allowance Communication to TC<br><input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences<br><input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)<br><input type="checkbox"/> Proprietary Information<br><input type="checkbox"/> Status Letter<br><input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):<br>Interview Summary; Comments On Statement of Reasons for Allowance |           |                    |           |   |              |                  |      |              |          |        |
| Remarks   |  |  |           |                    |           |   |              |                  |      |              |          |        |
| <b>SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT</b><br><table border="1"> <tr> <td>Firm Name</td><td>Krieg DeVault, LLP</td></tr> <tr> <td>Signature</td><td></td></tr> <tr> <td>Printed name</td><td>Brad A. Schepers</td></tr> <tr> <td>Date</td><td>May 20, 2009</td></tr> <tr> <td>Reg. No.</td><td>45,431</td></tr> </table>  |  |  | Firm Name | Krieg DeVault, LLP | Signature |  | Printed name | Brad A. Schepers | Date | May 20, 2009 | Reg. No. | 45,431 |
| Firm Name   | Krieg DeVault, LLP   |  |           |                    |           |   |              |                  |      |              |          |        |
| Signature   |   |  |           |                    |           |   |              |                  |      |              |          |        |
| Printed name  | Brad A. Schepers   |  |           |                    |           |   |              |                  |      |              |          |        |
| Date  | May 20, 2009   |  |           |                    |           |   |              |                  |      |              |          |        |
| Reg. No.  | 45,431   |  |           |                    |           |   |              |                  |      |              |          |        |

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| Signature   |  |
| Typed or printed name   | Brad A. Schepers  |
| Date  | May 20, 2009  |

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MAY 20 2009

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**


|                                   |   |                     |
|-----------------------------------|---|---------------------|
| In re patent application of:      | ) | Before the Examiner |
| Eisermann et al.                  | ) | David C. Comstock   |
|                                   | ) |                     |
| Application Serial No. 10/734,041 | ) | Group Art Unit 3733 |
|                                   | ) |                     |
| Filed December 11, 2003           | ) | Ref. No. MSDI-222/  |
|                                   | ) | PC765.00            |
|                                   | ) |                     |
| EXPANDABLE INTERVERTEBRAL         | ) | May 20, 2009        |
| IMPLANT                           | ) |                     |

**Via Facsimile Transmission: 571-273-8300****INTERVIEW SUMMARY**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the telephonic interview conducted between Examiner Comstock and the undersigned representative on March 30, 2009, please enter the following Interview Summary. Additionally, please provide any extensions of time necessary and charge any additional fees which may be necessary to Deposit Account No. 12-2424, but not to include any payment of issue fees.

|   |  |
|---|--|
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| May 20, 2009  |  |
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| Brad A. Schepers  |  |
| Name of Registered Representative   |  |
|   |  |
| Signature   |  |
| May 20, 2009  |  |
| Date of Signature   |  |

REMARKS

The Applicant's representative thanks Examiner Comstock for the courtesy of initiating the telephonic interview conducted on March 30, 2009 to advance prosecution of the subject application. Participants in the telephonic interview included Examiner Comstock and the undersigned representative.

Claims 8, 33, 41 and 48 were discussed with regard to U.S. Patent No. 5,059,193 to Kuslich and possible amendments of these claims to improve their form and to place the application in condition for allowance. Specifically, proposed amendments to claims 8, 33, 41 and 48 were discussed with regard to recitation of slidable engagement between the expansion member and the first and second axial walls of the implant. Examiner Comstock indicated that the subject application would be placed in condition for allowance if the proposed amendments were incorporated into the claims. Agreement was reached between Examiner Comstock and the undersigned representative with regard to the proposed claim amendments, which ultimately led to issuance of the Notice of Allowance dated April 2, 2009 including entry of the proposed claim amendments via an Examiner's Amendment.

Respectfully submitted,

By: 

Brad A. Schepers  
Reg. No. 45,431  
Krieg DeVault LLP  
One Indiana Square, Suite 2800  
Indianapolis, Indiana 46204-2079  
(317) 238-6334 voice

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Interview Summary  
Application Serial No. 10/734,041  
Inventor: Eisermann et al.

Page 2 of 2